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United States of America

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 880

ROBERT J. SWEM,
Petitioner,

vs.

THE PEOPLE OF THE STATE OF MICHIGAN
Respondent

Application for Certiorari to the Supreme Court
of the State of Michigan

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

The People of the State of Michigan, (hereinafter referred to as the People) indirectly admit that petitioner is entitled to relief, the facts in the instant case are identical with the facts in the case of *Rene DeMeerleer, petitioner, v. The People of the State of Michigan, re-*

spondent, decided by this Court on February 3rd, 1947 (No. 140, October Term 1946).

However, the People oppose the granting of the relief prayed for, upon the following grounds:

1. That petitioner has no *absolute right* to prosecute the Writ of *Habeas Corpus* in the Supreme Court of the State of Michigan, (hereinafter referred to as the State Supreme Court) such procedure being inappropriate.

2. That the matters set forth in the petition filed in the State Supreme Court are *Res Adjudicata.*

3. That since the State Supreme Court's decision *might* have been on either State or Federal grounds, and the State grounds alone being sufficient, the Writ of Certiorari should be denied.

ARGUMENT

I.

Is the Procedure Adopted by the Petitioner Inappropriate?

No question was raised by the People to the procedure adopted by the petitioner in the State Supreme Court.

The People have presented Michigan statutes and Michigan cases in an endeavor to sustain the rule that,

> "A Writ of *Habeas Corpus* cannot be substituted for a writ of error."

However, they have admitted in the latest case decided by the State Supreme Court upon this subject, *in re: Elliott,* 315 Mich. 662, the rule is not a hard and fast rule and can be overlooked, as the Court said in the Elliott case at page 666,

> "We overlook the rule often repeated here, that the Writ of *Habeas Corpus* cannot be used as a writ of error or claim of appeal from the judgment or sentence of the court. The grounds on which petitioner seeks to be discharged from custody will be considered on the merits."

In re: Elliott Supra, one of the grounds raised by the petitioner was,

> "1. That this sentence and detention are unlawful because he was sentenced without advice of counsel or having waived that right; * * *."

The Elliott case above referred to, was decided by the State Supreme Court on October 7th, 1946 and the decision in the instant case was rendered by the same Court

on October 18th, 1946. Both cases were pending before the State Supreme Court at the same time.

The State Supreme Court considered the petition for Writ of *Habeas Corpus* in the instant case and rendered its decision based upon the merits, in fact, the People filed an answer to the petition and stated,

> "This answer is filed for the purpose of bringing before the appellate court, the contents of the records of the Recorder's Court for the City of Detroit and the contents of the files kept by the Homicide Squad, in re Robert Swem and Clifford LaFrance" (R. 12).

and in denying petitioner relief stated,

> "• • • we find there is no *merit* in defendant's petition • • •."

The People further contend in their brief that *Habeas Corpus* is inappropriate and unsuitable to determine questions involving disputed facts, and where facts are in dispute the Trial Court is the proper forum to resolve the issue.

There are sufficient facts in the instant case that are not disputed to warrant this Court in granting the writ prayed for.

The People have admitted,

> "• • • defendant was not then represented by counsel and did not request such representation • • •" (R. 16).

> "• • • defendant not only did not ask that counsel be appointed but he would probably not have been entitled to have counsel assigned to him by the State since a showing of inability to pay is a prerequisite to such assignment" (R. 16-17).

"• • • he was not deprived of the right to have assistance of counsel, but voluntarily waived that right by not hiring counsel and by not asking to have counsel appointed" (R. 17).

"• • • at the time of his sentence by Judge John V. Brennan defendant was not represented by counsel" (R. 15).

Answering the contention of the People that the Trial Court should first be given an opportunity to correct any error, the record indicates that the Trial Judge did have an opportunity to rectify the injustice but denied petitioner relief (R. 9-10).

II.

Are the Matters Set Forth in the Petition Res Adjudicata?

Likewise, this question was not presented to the State Supreme Court.

It is the contention of the People that the time to apply to this Court for a Writ of Certiorari expired in April of 1946 inasmuch as the State Supreme Court in January of 1946 denied petitioner the right to appeal from the order of the Recorder's Court for the City of Detroit, denying the motion to vacate and set aside his plea of guilty. In denying petitioner leave to appeal, the State Supreme Court did not give the reason why petitioner was denied leave to appeal. Be that as it may, the State Supreme Court did in the instant case, accept the petition for Writ of *Habeas Carpus,* the People filed a full and complete answer to the petition, and the State Supreme Court rendered a decision upon the merits. That being a final judgment by the highest Court of the state, these proceedings were then instituted under Title 18, section 344 (b), U. S. C. A.

III.

Should the Writ of Certiorari Be Denied Since the Lower Court Might Have Decided the Question Upon State Grounds?

I believe that this question has been fully and completely decided by this Court in the DeMeerleer case (No. 140 October Term 1946).

The State Supreme Court rendered its decision in *DeMeerleer v. The People of the State of Michigan,* 313 Mich. 548, on March 4th, 1946, and apparently had that decision in mind as well as others when it stated in its opinion, in the instant case,

> "• • • under our decisions he cannot complain."

However, this Court in reversing the decision of the State Supreme Court in *DeMeerleer v. The People supra,* stated,

> "The court indicated that it had given consideration to the case of *Hawk v. Olson,* 326 U. S. 271 (1945) and the authorities cited therein, but concluded that the rule of the Michigan cases was determinative. See *People v. Williams,* 225 Mich. 133, 195 N. W. 818 (1923). *In this there was error.*"

So in the instant case no doubt the State Supreme Court did give consideration to the decisions of this Court but concluded that under the State Court decisions petitioner could not complain. Indicating very strongly that under the decisions of this Court petitioner could complain of a violation of his constitutional rights.

CONCLUSION

It is therefore respectfully submitted that in accordanct with the holdings of this Court, petitioner has been deprived of rights essential to a fair hearing under the Federal constitution and the relief prayed for should be granted.

Respectfully submitted,

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